

must be completed within 60 days of the date the agency ceases to offer debt repayment plans to individuals who receive counseling from such agency pursuant to 11 U.S.C. § 109(h); and

(B) The agency provides written notice to clients whose debt repayment plans it intends to transfer within the time described in paragraph (f)(1)(i)(A) of this section, identifying the approved agency to which the clients' plans will be transferred, any fees associated with servicing by the approved agency, and any fees associated with the transfer; or

(ii) In the reasonable determination of the United States Trustee, taking into account the facts and circumstances surrounding the agency's business and the terms of the bond, compliance with the bonding and insurance requirements set forth in paragraphs (d) and (e) of this section would impose an undue hardship on the agency.

[78 FR 16153, Mar. 14, 2013]

§ 58.24 Procedures for obtaining final agency action on United States Trustees' decisions to deny agencies' applications and to remove approved agencies from the approved list.

(a) The United States Trustee shall remove an approved agency from the approved list whenever an approved agency requests its removal in writing.

(b) The United States Trustee may issue a decision to remove an approved agency from the approved list, and thereby terminate the approved agency's authorization to provide counseling services, at any time.

(c) The United States Trustee may issue a decision to deny an agency's application or to remove an agency from the approved list whenever the United States Trustee determines that the agency has failed to comply with the standards or requirements specified in 11 U.S.C. 109(h) or 111, this part, or the terms under which the United States Trustee designated it to act as an approved agency, including, but not limited to, finding any of the following:

(1) The agency is not employing adequate procedures for safekeeping of client funds or paying client funds, which could result in a loss to a client;

(2) The agency's surety bond has been canceled;

(3) Any entity has revoked the agency's nonprofit status, even if that revocation is subject to further administrative or judicial litigation, review or appeal;

(4) Any entity has suspended or revoked the agency's license to do business in any jurisdiction; or

(5) Any United States district court has removed the agency under 11 U.S.C. § 111(e).

(d) If the Internal Revenue Service revokes an agency's tax exempt status, the United States Trustee shall promptly commence an investigation to determine whether any of the factors set forth in paragraphs (c)(1) through (5) of this section exist.

(e) The United States Trustee shall provide to the agency in writing a notice of any decision either to:

(1) Deny the agency's application; or

(2) Remove the agency from the approved list.

(f) The notice shall state the reason(s) for the decision and shall reference any documents or communications relied upon in reaching the denial or removal decision. To the extent authorized by law, the United States Trustee shall provide to the agency copies of any such documents that were not supplied to the United States Trustee by the agency. The notice shall be sent to the agency by overnight courier, for delivery the next business day.

(g) Except as provided in paragraph (i) of this section, the notice shall advise the agency that the denial or removal decision shall become final agency action, and unreviewable, unless the agency submits in writing a request for review by the Director no later than 21 calendar days from the date of the notice to the agency.

(h) Except as provided in paragraph (i) of this section, the decision to deny an agency's application or remove an agency from the approved list shall take effect upon:

(1) The expiration of the agency's time to seek review from the Director, if the agency fails to timely seek review of a denial or removal decision; or

(2) The issuance by the Director of a final decision, if the agency timely seeks such review.

(i) The United States Trustee may provide that a decision to remove an agency from the approved list is effective immediately and deny the agency the right to provide counseling services whenever the United States Trustee finds any of the factors set forth in paragraphs (c)(1) through (5) of this section.

(j) An agency's request for review shall be in writing and shall fully describe why the agency disagrees with the denial or removal decision, and shall be accompanied by all documents and materials the agency wants the Director to consider in reviewing the denial or removal decision. The agency shall send the original and one copy of the request for review, including all accompanying documents and materials, to the Office of the Director by overnight courier, for delivery the next business day. To be timely, a request for review shall be received at the Office of the Director no later than 21 calendar days from the date of the notice to the agency.

(k) The United States Trustee shall have 21 calendar days from the date of the agency's request for review to submit to the Director a written response regarding the matters raised in the agency's request for review. The United States Trustee shall provide a copy of this response to the agency by overnight courier, for delivery the next business day.

(l) The Director may seek additional information from any party in the manner and to the extent the Director deems appropriate.

(m) In reviewing the decision to deny an agency's application or remove an agency from the approved list, the Director shall determine:

(1) Whether the denial or removal decision is supported by the record; and

(2) Whether the denial or removal decision constitutes an appropriate exercise of discretion.

(n) Except as provided in paragraph (o) of this section, the Director shall issue a final decision no later than 60 calendar days from the receipt of the agency's request for review, unless the agency agrees to a longer period of time or the Director extends the deadline. The Director's final decision on

the agency's request for review shall constitute final agency action.

(o) Whenever the United States Trustee provides under paragraph (i) of this section that a decision to remove an agency from the approved list is effective immediately, the Director shall issue a written decision no later than 15 calendar days from the receipt of the agency's request for review, unless the agency agrees to a longer period of time. The decision shall:

(1) Be limited to deciding whether the determination that the removal decision should take effect immediately was supported by the record and an appropriate exercise of discretion;

(2) Constitute final agency action only on the issue of whether the removal decision should take effect immediately; and

(3) Not constitute final agency action on the ultimate issue of whether the agency should be removed from the approved list; after issuing the decision, the Director shall issue a final decision by the deadline set forth in paragraph (n) of this section.

(p) In reaching a decision under paragraphs (n) and (o) of this section, the Director may specify a person to act as a reviewing official. The reviewing official's duties shall be specified by the Director on a case-by-case basis, and may include reviewing the record, obtaining additional information from the participants, providing the Director with written recommendations, and such other duties as the Director shall prescribe in a particular case.

(q) An agency that files a request for review shall bear its own costs and expenses, including counsel fees.

(r) When a decision to remove an agency from the approved list takes effect, the agency shall:

(1) Immediately cease providing counseling services to clients and shall not provide counseling services to potential clients;

(2) No later than three business days after the date of removal, send all certificates to all clients who completed counseling services prior to the agency's removal from the approved list;

(3) No later than three business days after the date of removal, return all fees to clients and potential clients who had paid for counseling services,

but had not completely received them; and

(4) Transfer any debt repayment plans that the agency is administering to another approved agency.

(s) An agency must exhaust all administrative remedies before seeking redress in any court of competent jurisdiction.

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§ 58.25 Definitions.

(a) The following definitions apply to §§ 58.25 through and including 58.36 of this part, as well as the applications and other materials providers submit in an effort to establish they meet the requirements necessary to become an approved provider of a personal financial management instructional course.

(b) These terms shall have these meanings:

(1) The term “accreditation” means the recognition or endorsement that an accrediting organization bestows upon a provider because the accrediting organization has determined the provider meets or exceeds all the accrediting organization’s standards;

(2) The term “accrediting organization” means either an entity that provides accreditation to providers or provides certification to instructors, provided, however, that an accrediting organization shall:

(i) Not be a provider or affiliate of any provider; and

(ii) Be deemed acceptable by the United States Trustee;

(3) The term “affiliate” means:

(i) Every entity that is an affiliate of the provider, as the term “affiliate” is defined in 11 U.S.C. 101(2), except that the word “provider” shall be substituted for the word “debtor” in 11 U.S.C. 101(2);

(ii) Each of a provider’s officers and each of a provider’s directors; and

(iii) Every relative of a provider’s officers and every relative of a provider’s directors;

(4) The term “application” means the application and related forms, including appendices, approved by the Office of Management and Budget as form EOUST-DE1, *Application for Approval as a Provider of a Personal Financial Management Instructional Course*, as it shall be amended from time to time;

(5) The term “approved list” means the list of providers currently approved by a United States Trustee under 11 U.S.C. 111 as currently published on the United States Trustee Program’s Internet site, which is located on the United States Department of Justice’s Internet site;

(6) The term “approved provider” means a provider currently approved by a United States Trustee under 11 U.S.C. 111 as an approved provider of a personal financial management instructional course eligible to be included on one or more lists maintained under 11 U.S.C. 111(a)(1);

(7) The term “certificate” means the document an approved provider shall provide to a debtor after the debtor completes an instructional course, if the approved provider does not notify the appropriate bankruptcy court in accordance with the Federal Rules of Bankruptcy Procedure that a debtor has completed the instructional course;

(8) The term “debtor” shall have the meaning given that term in 11 U.S.C. 101(13), to the extent that individual has sought an instructional course from an approved provider;

(9) The term “Director” means the person designated or acting as the Director of the Executive Office for United States Trustees;

(10) The term “effective instruction” means the actual receipt of an instructional course by a debtor from an approved provider, and all other applicable services, rights, and protections specified in:

(i) 11 U.S.C. 111; and

(ii) this part;

(11) The term “entity” shall have the meaning given that term in 11 U.S.C. 101(15);

(12) The terms “fee” and “fee policy” each mean the aggregate of all fees an approved provider charges debtors for providing an instructional course, including the fees for any materials; “fee policy” shall also mean the objective criteria the provider uses in determining whether to waive or reduce any fee, contribution, or payment;

(13) The term “final decision” means the written determination issued by the Director based upon the review of the United States Trustee’s decision either to deny a provider’s application or